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REPLY

OF THE

RIGHT HONOURABLE

THE ATTORNEY GENERAL

OF IRELAND,

TO THE

ARGUMENTS OF THE COUNSEL

FOR THE

DEFENDANT,

IN THE CASE

OF THE

KING v. MR. JUSTICE JOHNSON.

Dublin:

PRINTED BY GRAISBERRY AND CAMPBELL.

1805.

JLD
78-1900

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KING'S BENCH

Tuesday, 24th January, 1805.

THE KING *versus* JOHNSON.

MR. ATTORNEY GENERAL,

My Lord,

I SHALL reply to the observations which have fallen from Council, on the part of Mr. Justice Johnson, with as much conciseness as I can. So far as relates to the construction of the Act of Parliament, I have already had the honor to lay my sentiments before your lordship; but as Mr. Justice Daly was then absent, it will be my duty to repeat, what I fear I shall

not be able to enforce with any additional argument. It has been well observed that this case must be considered like any common case, without reference to the particular misdemeanor of which the person stands accused, or the particular description of person accused of the misdemeanor. In order to try the Act, every possible case may be supposed, and may be applied as tests to ascertain its meaning. We may suppose it to be the case of an innocent man falsely accused, and labouring under unjust oppression, or we may conceive it the case of a flagrant malefactor, dreading punishment, and therefore shrinking from trial. These possible cases, while they are adverted to, for the purpose of assisting the mind in construing the Act of Parliament, are neither one way or the other to benefit or prejudice the particular per-

who has given occasion to the present

present discussion. I shall endeavour, therefore, to lay my sentiments before you, with every abhorrence of the crime and of the person who has committed it, but without the smallest intention of imputing guilt, merely because there has been accusation. Therefore it will not be necessary for me to take notice of the person on whose behalf the application is made, further than to observe upon an affidavit which he has filed, and to reply to what has been expressed of the oppressive use which it is alleged has been made of this Act of Parliament; enacted, as has been broadly insinuated, for a specific and not for any general purpose.

In all my other observations, I wish to be understood as speaking of misdemeanors generally, and in the progress of the present discussion, I shall be obliged to call your attention to the worst description of them.

It

It appears that Mr. Justice Johnson is indicted for a libel in the King's Bench of England, and that a warrant, signed by the Chief Justice, issued for his apprehension. The date of that warrant appears to be the 24th of November, 1804, and I think it foreign to the consideration before the court, or to those observations to which I am obliged to reply, to state, why the warrant remained unexecuted from *November* to *January*. But I will be excused, if, in reply to some observations, probably expressed with more harshness than was intended, I state, that on the Tuesday before the warrant was executed, it was distinctly intimated to Mr. Justice Johnson, that unless he would sign a paper, undertaking to appear and plead to the indictment which had been found, it would be necessary to enforce the warrant against him; but that if he would undertake

take to appear and plead within the first eight days of the then ensuing term, that the warrant should be withdrawn.

Mr. J. Johnson, in reply, said, that his counsel were out of town, and that he would consult them on their return to town, to attend the term, but did not otherwise give any immediate answer either in the affirmative, or the negative—no reply came on Wednesday—no reply came on Thursday, and therefore late on that day, the warrant having been previously endorsed, two magistrates went to his house, at Milltown—informed him, they had a warrant to arrest him, and also a paper, which if he signed, undertaking to appear and plead, the warrant would not be executed. But having declined to sign it, he was then informed by the magistrate, that he had directions to execute it, either on that evening, or the

the term was approaching very near, and that a little further delay would have the effect of postponing his trial, I desired the magistrate to tell him, that there was no authority to detain him in town, and that he must consider himself on his passage to England. This had the effect which it was intended to produce. He went with the magistrate, in whose custody he was, to the house of the Chief Justice, who immediately signed the fiat; and then signified to me, that he had done so, but that there might be some delay in preparing and sealing the writ. I therefore instantly consented, that upon Mr. Justice Johnson's undertaking to sue out the writ, and to have it served that evening, that he should be discharged. He accordingly was discharged, the writ was afterwards delivered, and at the appointed hour the next day, the

magistrate

magistrate was prepared with the return to it.

I trust I shall be excused, when charges of oppression and kidnapping have fallen in the course of the argument, for simply reciting a few facts in my own vindication; though I cannot help complaining, that it is a little severe, that when I am seeking to bring another man to trial, I am suddenly put upon my own. However, having been charged with an oppressive use of this warrant, I wish to take the first occasion of meeting and refuting the allegation, and to disclaim, distinctly, both for myself and others, the most remote idea of any proceeding towards Mr. Justice Johnson, which the necessary attainment of justice did not indispensably require.

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auxiliary that I have never known resorted to upon any former occasion, namely, the marginal abridgment of the compilers of the statute: who, in abridging a clause, are supposed to make the Act of Parliament! We are to have recourse to every other statute bearing upon the same subject, in England, not to strengthen our Act, but to arrive at this happy conclusion, that by this "mighty" Act of Parliament the legislature intended little or nothing. But, my Lord, the old rules of construction, by which the court will be governed, will be found perfectly true; apply them upon the present occasion; they will appear clear and satisfactory. You are first to see, how the law stood before the making of the Act. You are then to see the mischief which the legislature intended to remedy; and you are so to interpret the words,

words, that the remedy may be extended, and the mischief may be corrected; and if the words be sufficient to embrace the whole of the subject, you do not carry the law into effect, if you diminish their operation.

It is not, give me leave to observe, that the Act may operate upon *less*; the question is, has it not operated upon *more?* The question is not, whether garbling the Act, taking words out of it, which are in it, something may not be found, upon which it still may attach. But the question is, "give it any other ope-"ration, than I give it, and does it "not leave part of the mischief pre-"cisely where it found it." And will not a disgraceful class of malefactors still find, in their local situation, a protection from justice?

The

The first objection to my interpretation, which has been made, is, that considering every thing, the legislature must have intended to confine the remedial Act to *capital cases*, and not to have extended it to misdemeanors.

Now, how did the law stand before the statute was enacted? I assert, that the King, by his prerogative, might have removed from one part of his dominions to the other, all persons charged with capital offences, in order to abide their trial. I appeal to the uniform experience of every person conversant with criminal proceedings in the two countries, for the truth of this assertion, and it is further founded upon the authority of the English Habeas Corpus Act. This Act was conceived in great jealousy at the conclusion of the reign

of

of Charles II. and shortly before the accession of *James*. The legislature had some recollection of abuses which had been committed, and having anxious feelings, that such abuses should not be renewed, the provisions of this Act were conceived in the warmest regard for the liberty of the subject.

The 12th section of the English Habeas Corpus Act, restrains the power of the prerogative from sending any man out of England, but by the 16th section it is provided, that this clause shall not extend to persons who may have committed capital crimes in the places to which they shall be sent. The Irish Habeas Corpus Act, having been enacted in the reign of His present Majesty, it was not thought necessary to entertain that jealousy of the House of *Brunswick*, which the legislature had entertained of the House of *Stuart*, and, therefore,

therefore, the Irish Act does not contain the general prohibitory clause, which is in the English Act, or the proviso which restrains it. It leaves the law as it found it with regard to the prerogative of the crown—this prerogative is clearly recognized by the Irish statute, alluded to by my Lord Chief Justice, 8. Geo. 1. ch. 9, made perpetual by the 31 of the King, chap 44. which facilitates the transmission of those capital offenders to England, and as far back as experience can reach, or history teach us, it has been the uniform practice. Did there ever occur a single instance of a capital felon escaping punishment, because the secretary of state refused to transmit him? And, therefore, if the present Act be confined to capital cases, it is meant to guard, not against obvious mischiefs, which stared the legislature in the face, and occurred in every hour, but against

against *possible cases*, which no history will shew have occurred. Then what are you to understand by the Act? The gentlemen on the other side fix with great fondness upon the words, "sufficient provision," and that heretofore a capital felon could only be transmitted by a warrant of the Secretary of State. But it is said, that under this statute, he may be transmitted by a common justice, and then the court is gravely told, that the operation of the entire statute, was merely to change the person who was to transmit, and that it has no further operation.

But what becomes of these words, "whereby their offences often remain unpunished." I will ask any man, whether the legislature meant by those words the obstinacy of the Lord Lieutenant, or his Secretary, in allowing a capital malefactor to remain at large, and his

crimes to pass with impunity? Or whether it was not rather intended to embrace by the Act, the entire class of offenders that under the existing laws could not be rendered amenable.

Perhaps upon this part of the case, I am unnecessarily elaborate; because, it must be obvious to the plainest understanding, that with regard to capital cases, the Act is little more than a dead letter; the object of my argument is, therefore, to shew that inferior offences are more within the mischief to be corrected, and that the words adopted by the legislature are sufficient to bring them within the same remedy.

To support the construction proposed on the part of the defendant, it is contended, that the words "felons and other malefactors," do not embrace

embrace minor offenders, and that the word "malefactor" is not applicable to a man, who has not committed one of the greater crimes. In my judgment, the word extends to offenders of all descriptions; my construction of the word "malefactor," does not necessarily deny, that a malefactor may be a man, who ought to be hanged. But their construction denies that he is a man, the measure of whose guilt may be satisfied by the chastisement of whipping. They suppose that a malefactor must be ripe for execution. I suppose he may be also a man guilty of an inferior crime and who may be stopped in his career of vice, by timely and salutary punishment.

The first observation that naturally occurs, is, that where the words "felons and other malefactors" are used, they must mean, "malefactors, *other* than

felons." Now, if the word applied only to superior crimes, I might lay it down as a general rule, that tho' there may be felonies, which are not capital, yet there is no capital offence which is not a felony, 1 Hawk. 99. But to support my argument, that position is not necessary to be maintained in its full extent—however I must observe, that the exceptions stated yesterday, of apostacy, heresy, and præmunire are unfounded, none of them being capital offences by the laws of England at this moment.

Now, that the word "felon" extends to cases not capital is manifest; petty larceny is not capital, yet it is a felony—then, who will suppose that the legislature laid hands on the petty pilferer, and yet permitted the malignant slanderer to range unmolested.

Then look to the meaning of the word "malefactor"—it signifies an evil doer

doer, literally: taken in the common acceptation of the English language, it is an offender against the law, *vide Johnson's Dictionary.* By the way, this work is no indifferent repertory of belles lettres, and has been resorted to with great success by those who conceive the poets to be the best commentators upon an Act of parliament. But look to the word as used in our ancient statutes. The statute *de malefactoribus in parvis* applies to inferior offenders—and in a passage from 2 *Hal. P. C.* 136, in observing upon the stat. 34. Edward, III. Sir M. Hale speaks of malefactors being bound by Justices of the Peace to their good behaviour; and, therefore, it is a decided authority, that the word *malefactor* may be used as descriptive of an inferior offender. You will please to recollect also, that the person apprehended here, is to be taken before a magistrate to be dealt with as

if

if he were arrested in England, which implies a discretion, and seems to extend to bailable cases. And when you come to the enacting clause, it does not refer to the preamble, it does not say, "*such* person against whom a warrant issues," "but *any* person," &c. So that if the words in the former part were not sufficiently extensive to embrace the case, which I contend they are, yet the latter words do, beyond all possibility of doubt. They embrace any man against whom a warrant issues. To make him subject to this Act, it is only necessary to shew the existence of a warrant against him, under which he might be legally arrested in the country from which it proceeds. In any other construction, what line has the magistrate or the constable to direct him? Can human prudence protect them from actions of false imprisonment?

Give

Give me leave to put it in another way. Suppose I should be called upon to prepare a draft of an Act of Parliament, to do away the doubt, I should begin by reciting, "whereas some persons of singular "sagacity in the laws of Ireland, have "considerable difficulty in understanding the words "felons and other "malefactors; be it therefore declared and enacted, that those words "shall be held, and construed to extend to all persons guilty of *any* "*crime or offence* against the laws of "England and Ireland respectively."

This, certainly, would not be *ignotum per ignotius*, for it would be explaining the Act, by using the very words which are to be found in the statute which is sought to be explained. It is impossible to resort to any more comprehensive, and I know of

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no species of crime or offence that they do not include. You are not to torture the plain meaning of the words, in order to render the Act unoperative. You are not to cast about for a hook to hang a remnant of the law upon; you are not to strip it of its legitimate energy and force, and then expose the ineffective skeleton, in mockery of the legislature.

I cannot conceive how it is possible for the human mind, whether looking into law books, or dictionaries, or taking common sense for its guide, considering the pre-existing laws, the evil to be repressed, and the remedy adopted, to hesitate in saying, that the legislature meant to embrace all offences and all offenders. In the odious catalogue, none can seek for exemption?

It has been pressed upon this part of the case, that you are not to remove

move a criminal for a lesser crime, in a manner that might be so inconvenient to him. It is at the same moment admitted, that a person guilty of a petty larceny, under twelve pence, may be removed as well as a more atrocious offender, and that he clearly falls within the provisions of the Act, as a felon. Does he, who with malice prepense inflicts the vengeance of the sword, meeting his adversary in the dark, and striking him unseen; does he, who sends his poison into other countries, whether for the body or the mind, whether by arsenic or libel; does he, who writes from the malice of his heart, or who lives upon the reputation of others, when he can no longer subsist upon his own, seek to be compared with every common pilferer, and to profit by the comparison?

There was a long dissertation, upon this part of the case, between moral, natural, and municipal crimes, and a conclusion drawn, that the defendant, having resided in Ireland, when the fact was committed, could not be convicted in England, for a publication there.

If the position was true, it would be foreign to the present argument, and I do not know what benefit was sought to be derived from this division of crimes. A libeller is held to be an offender against the laws of God and man. His offence is prohibited in Scripture, in two or three places, and the commandment of God, that we should not bear false witness against our neighbour, should be an awful admonition to him. It is forbidden, also, by the municipal regulations of the land. But it seems there is a magic in the local situation

tion of the offender, which may protect him from punishment, notwithstanding this Act, which was intended to strip him of that local protection. Shall the arm of the criminal be co-extensive with the empire, and shall the arm of justice be fettered to the spot where he resides? Shall he be allowed, with impunity, to range along the borders of one country, casting his poison into another, and polluting it with his crimes? It is said, upon this head, that you could not punish an accessary to a felony, if, at the time, he did not reside within the jurisdiction where the principal offence was committed. I admit you could not, if there were not particular laws to reach him; and in this case, if there be not a particular law to reach such an offence, it should be provided for. But if an accessary to a felony may escape

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from an imperfection in the law; that is no reason why the perpetrator of a misdemeanor shall escape, where there is no such imperfection. But in Ireland the difficulty suggested does not occur. By the stat. 10 Car. I. Sess. 2. chap. 19, "if a man, whilst residing in England, be accessary to a murder or felony in Ireland, he may be indicted, tried and convicted in the county in which the principal is convicted."

But if we had no such provision in our law, will any man contend, that though a criminal of a certain description be taken in the fact he shall not not be tried, because sufficient provision has not been made for the punishment of a greater offender. Shall the good fortune of one man protect the crimes of another? The statute however declares, that a person who commits an offence while out of a particular jurisdiction, shall yet be punished within it; and

and justly, for reason tells us, that many of the most abominable and cowardly crimes do not require the personal presence of the perpetrator. Suppose a man sent pills under pretence of administering to the health of another in England, but in reality to poison him, and the party dies, is such an offender to say, "he "was not in England at the time of "the offence committed." Shall he who murders by poison sent with his own hand, be allowed to say, "I am not within the Act of Parliament; it was meant to fasten upon those who *escape*. I shall *escape* punishment for I did not *escape* from the country in which my crime was committed."

This leads me to the second head, and is an argument to refute the position, that the statute applies only to persons who being in one country, commit a crime and fly into another to avoid punishment. If you give it that construction,

construction, the poisoner escapes, the libeller escapes; all that train of crimes which debase the heart, and shew the cowardice of the criminal because committed in supposed security, will be relieved from the operation of an Act which professes to apply itself to all offenders. Is not this a case of such enormity as is within the provisions and words of the statute, so as to enable the law to grasp the offender, and will you stand between the law and its legitimate operation? But the feelings of the Court have been addressed on this occasion, and, through the Court, something has been said to the public. But I entreat you not to let every criminal embody himself with the liberty of the people, and suppose there can be no freedom in the land, but while it is an asylum for malefactors. I like to hear fine sentiments chanted from the dock; but my Lord, the liberty of

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the subject is to be preserved by other hands, and he who attempts to support it by defeating the law, will find himself miserably mistaken. But I cannot pass over the language which has been used, of " constitutional law and constitutional Judges;" how I love to see a Judge passing over the law to grasp at the constitution mounting the liberty of the subject to ride away from an Act of Parliament. This Court will not exhibit such a picture; for my part, I do not understand the distinction in a court of law. I consider the laws as embodied in the constitution, and I do not feel that they can have any separate existence. If you cannot get out of the Act by legal construction, look not to the constitution to help you out of the difficulty. He who is most obedient to the law is most faithful to the constitution. Construe this Act so as to forward the remedy and repress the mischief,

chief, and you may despise the vain and idle attempts of any criminal to excite a public feeling in his favour, whose only pledge to the constitution will be his resistance to the law.

Your Lordship knows, that the first statute which related to county and county passed in England is the 23. Geo. II. it extended to any person against whom a *legal* warrant issued, and it was confined to the cases of *escape* and *going into*, and it did not provide bail. The legislature found there was a defect in speaking of legal warrants, and in not providing for bail, and it was doubtful what species of escape fell within the Act; it also occurred that a variety of crimes might be committed in a county without going into it, and therefore the Act was amended by adding the words, "*reside* or "*be*," these words embraced cases, which

which the former were inadequate to reach. These Acts having provided for cases only between county and county in England, it was found unreasonable that the benefit of a law which operated as between Cornwall and Cumberland, should not operate as between Cumberland and the next Scotch county, and it was thought necessary to enact a statute for that purpose in 1773. Here let me remind you, how much we have heard of the efficacy of a young Act of Parliament; that it is as strong as an old one; that the moment it was enacted, an unfortunate malefactor was seized under it, and something has been hinted at by a silence most expressive, that the Act, young as it was, knew what it was about, and had a certain object to atchieve. These silent expressions, not less eloquent for being

dumb, are refuted by stating in this open court, that this law was enacted to put Ireland and England upon the same footing to all intents and purposes as England and Scotland were before. It adopts the words used in the statutes 23rd and 24th Geo. II. and those of the 13th of the king, the same expressions which were used in legislating, as between the several counties in England, and the same which were used, in legislating between England and Scotland, are now applied as between England, Scotland, and Ireland, and therefore, whether the statute be defective or not, it cannot be said to be an occasional Act, made for a particular purpose. It was intended to render the law between the two countries similar, and if it has no merit in itself, it has at least precedent to support it. As to the slavery which it is said to introduce, the good people of England will be astonished

astonished to find that they have slept under this oppression for thirty-two years, and at length have been awakened from their slumbers by the outcry of Irish malefactors.

I thought it right to say so much in vindication of the Act, because to me it was a little astonishing, that the counsel for the defendant, who refused to be tried himself, who denied all competency to try him, should feel confidence sufficient, to indict the legislature of having committed a high misdemeanor in enacting this law, to put every gentleman upon his trial who had forwarded the Act, and even those who never saw it, till it was in print, but had the misfortune to fall under his displeasure for directing its operation in Ireland.

Having

Having thus endeavoured to acquit the persons accused, I shall shew, from the sound construction of the Act, it is impossible to confine it merely to persons who escape. It is manifest, that if it were not intended to reach a man who was not in the country where the offence was committed, the two first words would be sufficient. For no man could in his proper person commit an offence in England, and be in Ireland, without *escaping* there, or *going* there, for how could a man be arrested in his proper person in Ireland, for an offence committed in his proper person in England, unless, after committing the offence, he escaped or went into Ireland, and therefore they use the words, *reside or be*, which must be words of operative meaning, applicable to the mischief, which it must be acknowledged pre-existed. They are words of strong and distinct significa-

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tion. If you strike out the words, *reside or be*, you certainly diminish the operation of the Act of Parliament, and suffer part of the evil to continue, which it was intended to correct.

But then it is said on the other side, that if that construction be right, strike out the other words, *escape and go into*, and the remaining words will answer. I agree with them that if either clause ought to be struck out, it must be that which comprehends the lesser description, the insufficiency of which had rendered the other necessary; the latter comprehends the evil of *escape and go into*, and also the other evil which it was intended to remedy; in other words, strike out the expressions, *escape and go into*, and you will have an Act of Parliament co-extensive with the whole mischief intended to be remedied. But strike out the

latter

latter words, and the Act of Parliament is utterly insufficient to remedy the evil. Now, we know, it frequently happens, that the legislature may use three or four words, not synonimous, though tending to the same thing, and therefore, if you are called upon to strike out any words, which will you strike out—the comprehensive words which embrace the others, or the less comprehensive, in which the others cannot be embraced? In other terms, if you feel yourself at liberty to weed an Act of Parliament, will you weed it of those words which promote its effect, or of those words which diminish its operation?

I have pointed out several classes of offenders who will escape punishment, if the latter words be struck out. But inasmuch as a notable discovery made, by which the entire four

words are permitted to remain, it may be necessary to observe a little upon this second construction—it seems that a word or two becomes necessary to be introduced for this purpose, and will have the effect, of making very great jargon of that which was very good sense; the exposition is this, the four words are to remain, but then, they are to be separated, and the two first are to be applied to the *person*, and the two last to the *place*; thus at the expence of a little law, a little grammar, and a little good sense; the *person* to be apprehended, is the person who *escapes* or *goes into*—and the place where he is to be apprehended, is the place in which he shall *reside* or *be*—O! sapient and sagacious legislature! with what wisdom hast thou provided, that a man shall not be taken where he is not to be found; with what timely providence hast

hast thou pointed out to the constable the precise line of his duty; you first describe the offender, and then you provide, that he shall never be arrested, but in the place where he shall be! The person who escapes from England and goes into Ireland is the *person* within the Act. But what do the words *reside* or *be* mean?—Oh! they have nothing to do with the *person*, they only guard against the indiscretion of the constable, who might otherwise arrest a man in one county, while he was innocently employed in another. There may be good sense in this argument, but I shall leave it to be discovered by others, protesting, that to my humble judgment, it is a construction which passeth all understanding.

Upon the subject of the construction of Acts of Parliament, I think it a waste of time to cite many authorities;

thorities; but as the preambles of the Act of last session, and of the several other Acts upon the same subject in England, have been strongly relied upon, to controul the enacting part, I shall refer you to a very penal statute in England, in which the legislature indulged in a length of preamble, which, if attended to, would have considerably abridged the efficacy of the enacting part; but unfortunately for the culprit, the enacting part was very clear. I allude to the 9 G. 1. c. 22. for sending threatening letters, 2. East, P. C. 1113. The opinion of the twelve Judges was taken upon the point, how far the enacting part was controuled by the preamble. They decided against the preamble, and Mr. Justice Buller, in giving the opinion of the Judges, uses these words: which are strongly applicable to the Act now before you.

 "Where

"Where the enacting clause of a "statute *refers* to such offences only "as are mentioned in the preamble, "it may be thereby controuled or re- "strained; but in this case it would "be doing violence to very plain "words, and repealing some of the "obvious provisions, if it were so re- "strained. It is no uncommon thing "for a statute to recite a particular "mischief as the cause of making "the statute; and yet for the enact- "ing part of it to embrace more ge- "neral objects, and to extend to "other cases which the legislature "thought within equal mischief.

Another argument which has been mentioned, is that this statute is prospective as to *crimes*, and cannot attach upon a person whose guilt was complete before the 1st of Aug. last, and that to give it any other construction would make

make it an "expost facto" law. With respect to this, you will observe, that there is no reference in the Act to crime, it is confined to criminals; it does not add to the catalogue of crimes—nor does it take one from it. It leaves all things where it found them, except the criminal. It seeks to bring him within the jurisdiction where his offence was committed, but it does not touch upon the crime, or make any alteration in the evidence of it. But here the crime, of which the party is accused, may have been committed long since the 1st of August, and therefore in point of fact, there is no ground for the objection which has been made; it is equally without foundation in point of law. The Act gives a new mode of apprehending an old offender; but is every new process for bringing in a delinquent to be called an *ex post facto* law. As well may a constable newly created,

created, be called an "*ex post facto*" constable. I thought this appellation was given to a law, which after the fact done, made that criminal, which was innocent before. The distinction seems too plain to be misunderstood.

My Lord, the last objection is drawn from the words, "whereby their offences remain unpunished, &c." and it said, the offence in the present case cannot remain unpunished, because the party may be tried for it in Ireland, that is, that he may be tried in Ireland for an offence against the laws of England. I take the liberty of repeating what I asserted before, that the King's peace is distinct in England, Stotland, and Ireland. That assertion was met by another, that the King's peace since the Union is the same throughout his dominions. I apprehend, that the Union

has

has made no sort of alteration in the administration of our law. I conceive that the King's peace in Ireland is protected by distinct judges, distinct magistrates, and distinct laws—the King's peace in England and in Scotland, respectively, by judges, magistrates, and laws equally distinct and independent. If a man could be tried for an assault in Westminster, before a judge in Ireland, the most unheard of chaos would be introduced, and a man would be tried by one law for the breach of another. I take it that the law stands as it did before the Union, and before this Act, and that if a man commits a breach of the peace, or an act tending to break the peace, he must be tried in the same manner as before the Union, and a conviction, or acquittal for a publication of a libel, in one country cannot be pleaded in bar to

an indictment for a publication of the same libel in the other. It is not so in the same country. If a man be indicted for his offence, the peace of that country, in which he is brought to trial, is vindicated throughout, and he cannot be tried again, except for a subsequent publication, which, in truth, would be a distinct offence. The offence of a libel springs from the publication. As long as a man absorbs his own venom, the law considers him sufficiently punished by being the receptacle of his own malevolence. But if at length, satiated from feeding upon his own malice, he disseminates his noxious poison to the public, if it be in Scotland, he is an offender against the laws of Scotland, and will be punished as such. If the publication be in Ireland, he is an offender against the law of Ireland, and will be punished as such. So if he publishes

lishes in England, he is to be punished as an offender against the law of England, and the law does not allow a man when called upon to answer in one of those three countries, to take refuge from punishment in the multiplicity of his crimes; he is not permitted to say "I will not be tried here, "or there, because in disturbing the "peace of two other countries I have "transgressed the laws of my own, you "should be parsimonious in punishment, because I have been prolific in crime." But supposing the several publications to be one offence and triable in either country, does it follow that the criminal should chuse his own judge? Because he refuses to be tried where the accusation is made, must justice submissively wait upon him where she may not have the same means to vindicate herself; "you have "indicted me in England where you

"have

" have evidence to convict me, there-
" fore I will not go there, but you
" may try me in Ireland, where I am
" not indicted, and where possibly
" your evidence may not be equally
" strong." But, my Lord, upon this part of the case let us come to plain and manly language; Mr. Curran told you what he could effect by the magic of his eye; that the author would be instantly acquitted if tried in his own country. If the author be in this land let him come forward, let him raise his head to be seen, and justify his publication as the friend of the people, let him avow the fact, let him enable me to prove that he is the author of those letters, and I will throw myself upon the justice of an Irish jury and an Irish bench, I will not shrink from the trial of such a question in my own country. Who is he that uses those arguments? He is

supposed

supposed to be an Irishman and a resident in this country; if so, he knew the falsehood of his calumny, at the moment he was accusing a member of this high court, of tarnishing his robes and polluting the ermine, which had been entrusted to him as a sacred deposite, and he preferred this accusation, not before an Irish public, where the integrity and character of the learned judge would have protected him from the coarse slander of his assailant, but before the tribunal of another country where he could not have equal protection. This libeller, whoever he may be, dragged him to a distant court without notice of trial, without process to bring in his witnesses, without letting him see the hand that held the accusation. Will such a man complain of being brought before the same tribunal to purge his abominations; but, let him avow him-

self, let him rest upon the merits of his publication, and I will try him at home. Yes, my lord, I feel it would be divine retribution, that as he tried an honest man where he was not known, he should be tried himself where he would not only have the charge of the accuser, but the whole weight of his own character to contend with. I should be influenced by more than ordinary zeal for his conviction, if I wished him to labour under more accumulated pressure. His character is not unknown to the law; he must be a man unchaste in his manners—embarrassed in his fortune—and profligate in his principles; the language may be my own, but the description is pretty accurately taken from Lord Coke's report of the case *de libellis famosis.*

But it is said, "I can have no "witnesses, because I have no power "to

"to enforce their attendance;" who is it says so? The gentleman at present before you has made an affidavit; he states in it, distinctly, the fact with which he is accused, and does not deny it. He swears to an *alibi*, as his only protection, in a case in which an *alibi* is no legal defence. But if metaphysics are to be ransacked to extract a defence from such materials, let him go to the bar of the King's Bench in England, and debate the matter there. But though another man may have cause to complain of the want of witnesses, the present defendant has none. He does not deny the charge; he does not say that he has any witnesses to examine, or that, if he has, he cannot procure their attendance; he does not distinctly say, that he has any evidence to produce; his affidavit is modestly conceived in these words, "that *any evidence* which deponent

"could

" could procure, relative to deponent's " *hand-writing*, *conduct*, or *character*, " do *arise* in the city of Dublin, *and* " *not elsewhere*, and that he hath no " means whereby he could be certain " of, or compel the attendance of " witnesses in the city of London, " necessary for his defence."

I shall not observe further upon this affidavit, than to remark that it does not qualify a man to embody in his cause the liberty of the country, and to call himself the champion of the people.

If there are imperfections in this Act of Parliament, they may be rectified; but are we to refuse obedience to an Act, as long as it is capable of being amended. It will mortify the vanity of those who have been so loud in observing on the omission to provide bail, to tell them that the observation

servation did not originate with them, I hope it may be remedied, but, certainly, not without some difficulty and consideration; but as to the empty declamation about the repeal of the Habeas Corpus Act, it is idle and preposterous; and every Act that makes an arrest lawful which was not so before, may be as well called a repeal of the Habeas Corpus Act. It never was the intention of that Act to discharge a person who was lawfully arrested, for the liberty of the subject does not depend upon freedom from arrest, but in having the cases clearly and distincly defined, in which he may be liable to it. The defendant is not in custody under a warrant of commitment. Indicted of a crime in England, he will have the full benefit in that country of the Habeas Corpus Act. He is offered the same advantages here, and he disclaim

claims the favour; and yet in his progress to an English Judge and an English Jury, his situation is compared to that of an unfortunate duke who was hurried to Paris, and executed at midnight. It does not become counsel for the crown thus to anticipate his conviction, and I trust the eloquence of his advocate has hurried him beyond his own view of the subject.

You will recollect that by the Stat. 10 Chas. I. a man guilty of an accessorial offence in England, the principal felony having been committed in Ireland, might be tried in the country where the principal felon was convicted; although the accessorial offence was committed in England, and from the hour of the enactment of this law to the present moment, no instance has occurred of

any

any difficulty under the act, nor any question on the severity of the want of compulsory process to bring over witnesses. A criminal seldom relies upon the testimony of reluctant witnesses, whose attendance can only be had by the strength of legal process. But what is the case of a man whose defence depends upon hand-writing? It must be known to his most intimate friends, and they are the persons who can most accurately depose to his conduct and character; and can he say he wants a compulsory process to prove such facts? It is evident, then, that all the severity which has been expatiated upon, is not to be found in this case, and all the defendant has to complain of, is the lenity and indulgence with which he has been hitherto treated. He has been cruelly deprived of the honourable character

of

of a martyr, and left in the humble situation of a man accused of a crime, and unwilling to take his trial.

Whether the offence in this case be bailable or not, matters little upon this argument, but in 2. Hale, 133, it is said that where there is an indictment for a bailable offence, no bail can be taken before a plea to the indictment; therefore, upon the whole of the case, I trust you will be of opinion that there has been no severity; that the defendant has had every indulgence and attention, consistent with the due administration of justice; that under the words, "felons and other malefactors," all offences are included; that a libel is an atrocious offence; that you will disappoint the intention of the legislature, if the Act be not carried into full operation; and that a libeller is that description of person upon which the law

law was peculiarly called upon to attach; and that the amendments in the latter statutes, were intended to remedy the evil which the former were not sufficiently comprehensive to embrace.

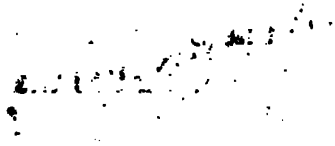
It is said, that public justice may be satisfied without proceeding against the defendant, that a man residing in Ireland could not publish in England, without having assistant's there. "Prosecute them in all direction, satisfy public justice, even to revenge; but let the author escape whoever he may be." I can well conceive, my lord, that the author who committed the crime, never meant, that the punishment should extend to himself. But shall the angry law, break the weapon in pieces, and let loose the hand which directed its execution? It would be as inconsistent with law as with public feeling to do so, to prosecute those who acted in

obedience to the orders of the libeller, and yet suffer him to escape.

It has also been alleged that animadversion upon public subjects is a public right. Within certain bounds, I admit it. But no man is to make public discussion, a pretence for putting forth private malice and resentment. The honest feelings of individuals are not to be made the sport of every idle calumniator, who seeks his own repose in the afflictions of others, if he disseminates poison, he must answer for the consequence, and may be asked, "who subjected the actions "of honest and honorable men to "such a tribunal as thou art? *Who made* "*thee a ruler and a judge over us?* Cease "thy iniquitous inquisition, *judge not* "*lest thou shouldst be judged.*" Such is the language of common sense, such is the language of the law. The slanderer

derer should be delivered over to the punishment he deserves. Thus will you satisfy the law, and preserve the constitution, and acting with even and unshaken hand, teach the body of the people this salutary lesson, that as the weakest man is strong when he is upheld by the law, so the strongest man is weak when he presumes to resist it.

FINIS.



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